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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-410-C - ORDER NO. 98-48
JANUARY 23, 1998

IN RE: Application of Winstar Wireless of) ORDER
South Carolina, Inc. for a Certificate) APPROVING
of Public Convenience and Necessity) CERTIFICATE
to Provide Switched and Non-Switched) TO PROVIDE
Local Exchange and Interexchange) LOCAL AND
Telecommunications Services within the) INTEREXCHANGE
State of South Carolina.) SERVICES

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of Winstar Wireless of South Carolina, Inc. ("Winstar" or "the Company"). The Application requests that the Commission issue a Certificate of Public Convenience and Necessity authorizing Winstar to provide switched and non-switched local exchange and interexchange telecommunications services in the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed Winstar to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings and to provide notice of the hearing date on this

matter. Winstar complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and Hearing. Petitions to Intervene were received from the South Carolina Telephone Coalition ("SCTC"), and the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"). The Consumer Advocate filed a letter prior to the hearing stating that it would not participate in the hearing.

A hearing was convened on January 14, 1998, at 11:00 a.m. in the Commission's Meeting Room. The Honorable Guy Butler, Chairman, presided at the hearing. Winstar was represented by Faye A. Flowers, Esquire. The Commission Staff ("Staff") was represented by F. David Butler, General Counsel. SCTC did not appear at the hearing.

Prior to the hearing, Winstar and the SCTC executed a Stipulation. The Stipulation was filed with the Commission prior to the hearing in this matter. As a result of the Stipulation, SCTC withdrew its intervention in the Docket. The Stipulation may be described as containing the following substantive points:

- (1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Winstar if the Commission makes the necessary findings to grant the Certificate and if all stipulated conditions are met;
- (2) Winstar agrees that any Certificate granted by the Commission will authorize Winstar to provide local service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) Winstar agrees that it is not requesting the Commission to find whether local competition is in the public interest for rural areas;

- (4) Winstar agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until Winstar provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Winstar also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;
- (5) Winstar agrees that if, after Winstar gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Winstar will not provide service to any customer located within the service area in question without prior and further Commission approval;
- (6) Winstar acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;
- (7) Winstar and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and
- (8) Winstar agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and Winstar, was filed with the Commission prior to the hearing in this matter, and was made a part of the record at the hearing. We therefore approve the stipulation.

In support of its Application, Winstar presented Stephen L. Merrill, Assistant Vice President, Regulatory, of Winstar, to testify. The purpose of Mr. Merrill's testimony was (1) to describe Winstar's service offerings and (2) to demonstrate Winstar's financial, managerial, and technical ability to provide the telecommunications services for which Winstar seeks authority.

DISCUSSION

S.C. Code Ann. §58-9-280 (Supp. 1996) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, Winstar's Application, and the evidence presented at the hearing, the Commission finds and concludes that the local portion of the Certificate sought by Winstar should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented at the hearing which relates to that criteria:

(1) The Commission finds that Winstar possesses the technical, financial, and managerial resources sufficient to

provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). Mr. Merrill testified that Winstar has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which Winstar seeks authority. Mr. Merrill states that Winstar's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience.

Regarding Winstar's financial resources, the record reveals that Winstar is incorporated under the laws of the State of Delaware. Mr. Merrill testified that Winstar has sufficient financial resources to provide local and interexchange services. According to Mr. Merrill, Winstar expects to maintain its growth in sales.

No other party offered any evidence in opposition to Mr. Merrill's testimony. Based on the undisputed evidence of the record, the Commission finds that Winstar possesses the technical, financial, and managerial resources sufficient to provide the services requested. (We hold that this is true for both the local and interexchange services proposed.)

(2) The Commission finds that Winstar will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Merrill specifically stated that Winstar will comply with all applicable rules, policies, and statutes applicable to the offering of those services and that Winstar fully intends to meet the Commission's service standards.

Furthermore, Mr. Merrill stated that Winstar had made certain changes to its tariff, as suggested by Staff, to bring the tariff into compliance with Commission Rules and Regulations. No party offered any evidence to dispute Mr. Merrill's testimony. Based on the undisputed testimony from Mr. Merrill, the Commission believes, and so finds, that Winstar will provide telecommunications services which will meet the service standards of the Commission (both local and interexchange).

(3) The Commission finds that Winstar's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Merrill stated that Winstar's service offerings would not adversely impact the availability of affordable local exchange service. Mr. Merrill offered that certification of Winstar would serve the public interest through increased choice, improved quality of service, and heightened opportunities to obtain improved technologies in the home and business. No party offered any evidence that the provision of local exchange service by Winstar would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by Winstar will not adversely impact affordable local exchange service.

(4) The Commission finds that Winstar will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Merrill testified that Winstar will comply with the Commission's universal service

requirements. No party disputed Mr. Merrill's testimony. Based on the undisputed evidence of record, the Commission finds that Winstar will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by Winstar "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Merrill offered that approval of Winstar to provide local telecommunications services will benefit consumers by providing increased choice, improved quality of service, and new opportunities to obtain improved technology in the home and businesses. Further, Mr. Merrill offered that market incentives would be improved through the increase in the diversity of suppliers and competition in the local exchange telecommunications market. Mr. Merrill's testimony was undisputed, as no party offered any evidence that approval of Winstar's Application would adversely impact the public interest. Therefore, the Commission finds that approval of Winstar's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

Therefore, based on the findings above, the Commission finds and concludes that authority to provide local service sought by Winstar should be granted.

With regard to Winstar's request for a certificate to furnish interexchange services, Winstar proposes to offer long distance services using both facilities-based and resold interexchange and

dedicated non-switched services, as well as operator services. The Commission believes that Winstar has the experience, capability, and financial resources to provide these services as well. We believe that the authority to provide interexchange services should be granted also.

IT IS THEREFORE ORDERED THAT:

The Application of Winstar for a Certificate of Public Convenience and Necessity authorizing Winstar to provide switched and non-switched local exchange and interexchange telecommunications services in the State of South Carolina is approved.

1. With regard to the local services, the Stipulation filed by Winstar and the SCTC is approved by this Commission, is binding upon Winstar and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding local competition in the rural areas of South Carolina. Winstar shall conduct its operations in compliance with the Stipulation until further Order of the Commission.

2. With regard to both local and interexchange services, Winstar shall file, prior to offering the granted services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes as proposed by the Commission Staff and to which Winstar agreed.

3. With regard to both local and interexchange services, Winstar shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared

to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, Winstar shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Winstar shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, Winstar shall promptly notify the Commission in writing if the representatives are replaced. Winstar is directed to comply with all Commission regulations unless expressly waived by the Commission.

4. Winstar shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. With regard to interexchange services, Winstar may provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through facilities-based and resale of intrastate Wide Area Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for facilities-based and resale by tariffs of carriers approved by the Commission, and may provide operator services.

6. The Commission adopts a rate design for Winstar for its

facilities-based and resale interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

7. The Commission also adopts a rate design for Winstar for its operator services which includes only maximum rate levels for each tariff charge. For intrastate interLATA ("0+") collect calls, Winstar may not impose a fixed operator service charge more than the intrastate charges then currently approved for AT&T Communications of the Southern States, Inc. ("AT&T"), and for the usage portion of the call, Winstar may not charge more than the intrastate rates charged by AT&T at the time such call is completed. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

8. Winstar shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Winstar shall file its proposed interexchange rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is

waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S. C. Code Ann. §58-9-540 (Supp. 1996).

9. If it has not already done so by the date of issuance of this Order, Winstar shall file its revised maximum interexchange tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

10. Winstar is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes facilities-based interexchange carriers and resellers should be treated similarly.

11. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

12. Winstar shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Winstar changes underlying

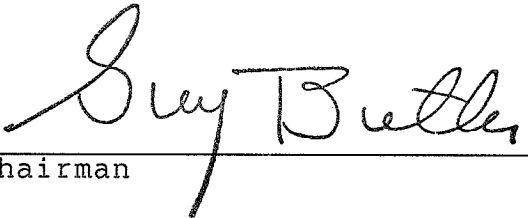
carriers, it shall notify the Commission in writing.

13. With regard to the origination and termination of toll calls within the same LATA, Winstar shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

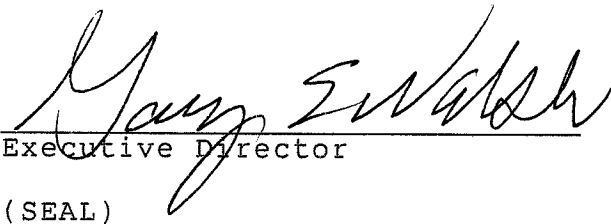
14. Winstar shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment B.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director
(SEAL)

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ATTACHMENT A

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230

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ATTACHMENT B

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE